

ADOT JPA File No.: 07-091
AG Contract No.: P2007-001795
Project: Oro Valley Market Place
Section: SR 77 &
Innovation Market Drive
TRACS No.: H5459 01D & 01C
Budget Source Item No: 11505

JOINT PROJECT AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
VESTAR OVM, LLC

THIS AGREEMENT is entered into this date October 15th, 2007, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and Vestar OVM, LLC, an Arizona limited liability company ("Developer"), acting by and through their authorized representatives.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Developer is empowered to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.

3. Vestar OVM LLC (the Developer), plans to construct a commercial shopping center along SR 77 (N. Oracle Road), south of Tangerine Road. The Developer has requested and the State has agreed to incorporate the Developer's enhancements: *a) two (2) access connections, b) dual left turn lanes, and deceleration lanes, (lane widening) and c) traffic signal*, into the State's ongoing roadway improvement project along SR 77, at the Developer's expense estimated at \$900,000.00 (see attached exhibits). Both parties agree that the Developer's lane widening efforts will be mutually beneficial.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Approve design plans, specifications and such other documents that are required for the Developer's enhancements.

b. Invoice the Developer sixty days after execution of this Agreement \$500,000.00 for the Developer's enhancements based on the estimated costs.

c. Invoice the Developer on or after April 1, 2008 for an amount of \$400,000.00, for the Developer's enhancements based on the estimated costs.

d. Construct the State's roadway improvement project including Developer's enhancements as shown in the Exhibit attached hereto and made a part hereof.

e. Include in the project specifications a direction to the contractor to complete the two access connections by March 15, 2008.

f. In the event the Developer's two accesses are not completed by April 1, 2008, allow the Developer to obtain a permit to construct temporary entrances consisting solely of improvements connecting the development to the existing edge of the pavement of SR 77, and inspect all work performed by the Developer's contractors during and after completion of the two accesses along SR 77.

g. Once the work on Developer's enhancements is completed, either reimburse or invoice Vestar for the difference between the estimated and actual costs.

h. Be responsible for maintenance of SR 77 upon completion of construction of the roadway improvements, except for Developer's turnouts.

i. Be responsible for the maintenance of the traffic signals at the intersection of SR 77 and Innovation Marketplace Drive.

2. Developer shall:

a. At Developer's expense provide design plans, specifications and other necessary documents to State standards as are required for the Developer's enhancements. The State acknowledges that the Developer has complied with this requirement.

b. Upon receipt of an invoice from the State, as described in section II. 1. b & c of this Agreement remit to the State the invoiced amount.

c. Be responsible for any excess of actual costs over the deposit describe above, and pay the invoice described in paragraph II.1.g. of this Agreement, within 30 days after receipt.

d. Be responsible for the maintenance of Developer's turnouts and related infrastructure.

III. MISCELLANEOUS PROVISIONS

a. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of construction of Developers enhancements, except that the agreements for maintenance are perpetual.

b. Either party may cancel this Agreement two weeks prior to advertisement of the State's project upon a thirty-day (30) written notice to the other parties.

c. If this Agreement is terminated for any reason, the Developer is responsible for all costs expended or accrued by the State in connection with the Developer's enhancements.

d. The State assumes no financial obligation or financial liability under this Agreement, nor for any resulting design or construction in regards to the Developer's enhancements. The Developer assumes full responsibility for the design, plans, specifications, and reports, which arise, result from or relate to the Developer's enhancements, the engineering in connection therewith and the construction of the Developer's enhancements contemplated, and for cost overruns and construction claims relating thereto. It is understood and agreed that the State's participation is confined solely to that set forth under this Agreement.

e. The Developer shall require its designer, and any of its contractors who work within the State's right-of-way to (i) name the State as an additional insured in the designer's or contractor's insurance policies; and (ii) to name the State as an additional indemnitee in the Developer's contracts with its designers or contractors. The Developer hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and /or damages incurred by the State and from any claims made against the State, which directly or indirectly result from this Agreement, except to the extent caused by the negligence or intentional misconduct of the State, or any of its departments, agencies, officers and employees. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs and expenses of litigation and attorney's fees. The provisions of this paragraph are in addition to any requirements of Developer's encroachment permit(s), and shall not in any way detract from or limit such permit requirements.

f. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511 in the event of a conflict of interest of any State officer or employee involved in this Agreement.

g. All books, accounts, reports, files and other records relating to this Agreement shall be retained by the Developer and subject at all reasonable times to inspection and audit by the State for five years after the completion of the construction project. Such records shall be produced at the Tucson ADOT District Office.

h. In the event of any controversy which may arise out of this Agreement, venue shall lie in the Maricopa County Superior Court in Phoenix Arizona upon request.

i. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Vestar OVM LLC
Attn: Mark Grasson
2425 E. Camelback Road Suite 750
Phoenix, Arizona 85016
Phone # (602) 553-2636
Phone# (602) 320-6123

j. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

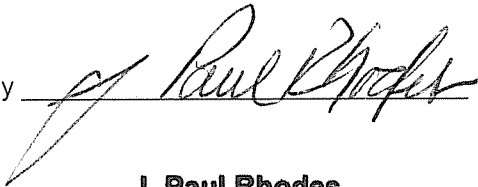
k. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

IN WITNESS WHEREOF, the parties have executed this Joint Project Agreement the day and year first above written.

VESTAR OVM LLC.

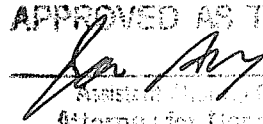
STATE OF ARIZONA

Department of Transportation

By 

J. Paul Rhodes
Manager

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

APPROVED AS TO FORM
 10/15/07
Attorney for Department
of Transportation

APPROVAL OF VESTAR OVM, LLC

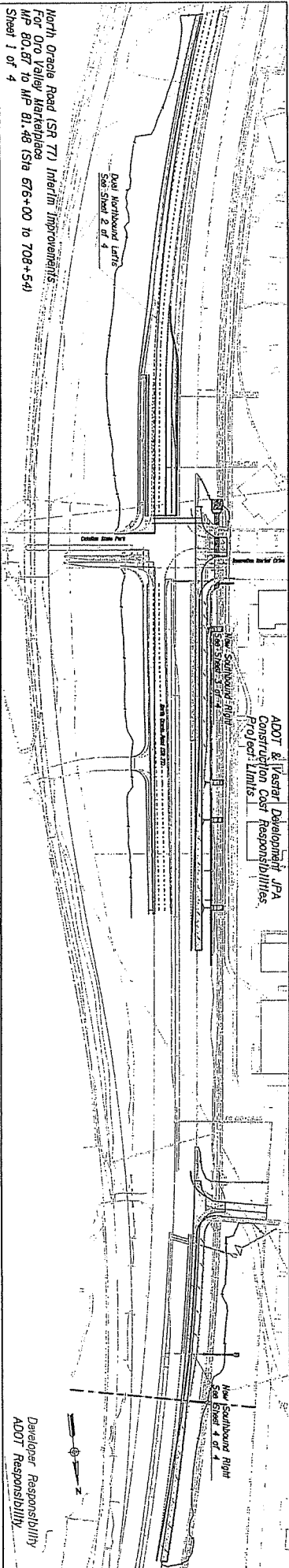
ATTORNEY

I have reviewed the attached proposed Agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODEL TRANSPORTATION DIVISION, and VESTAR OVM, LLC., and declare this Agreement to be in proper form and within the powers and authority granted to VESTAR OVM, LLC under the laws of the State of Arizona.

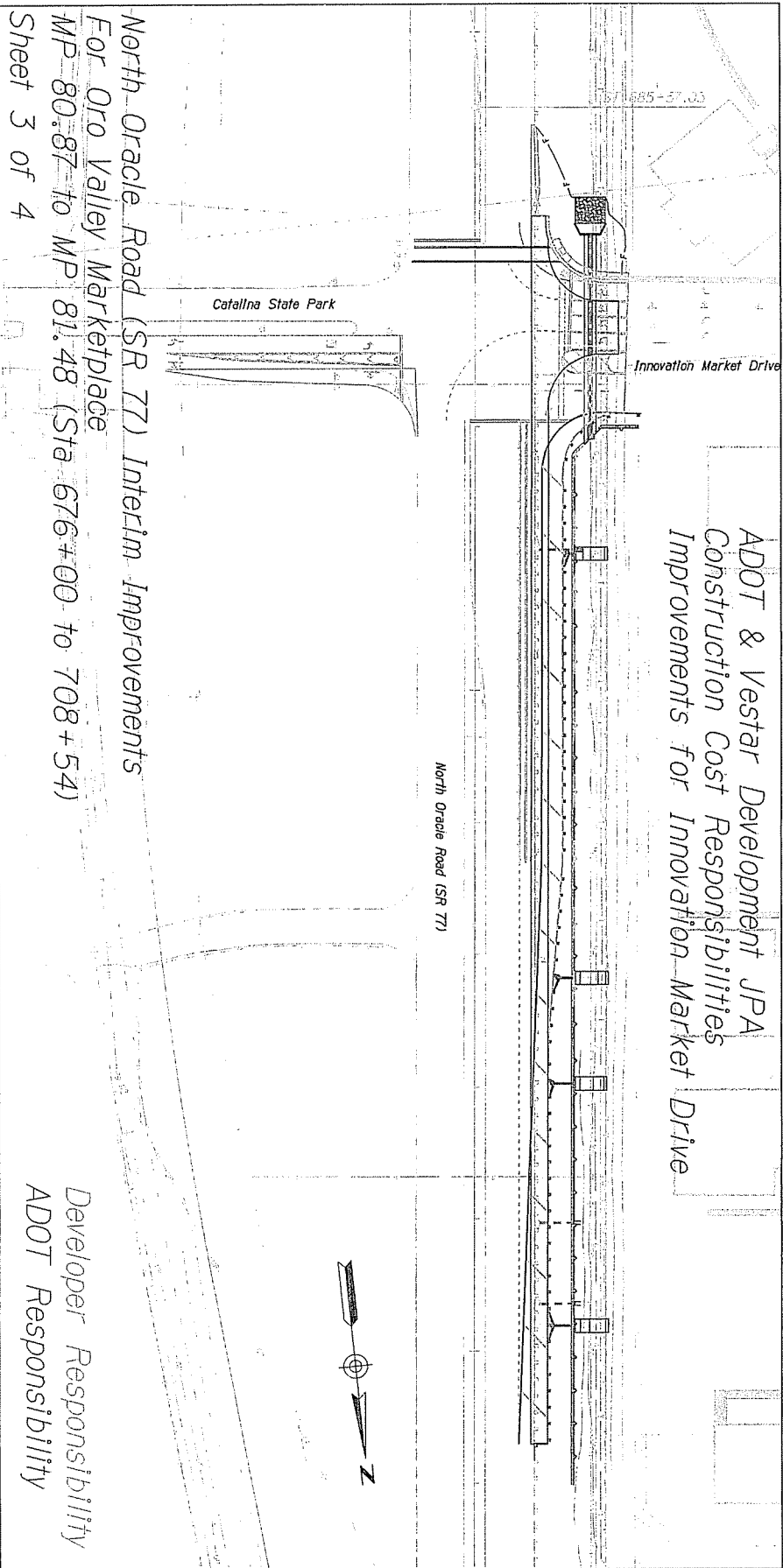
DATED this 25th day of September, 2007



ATTORNEY

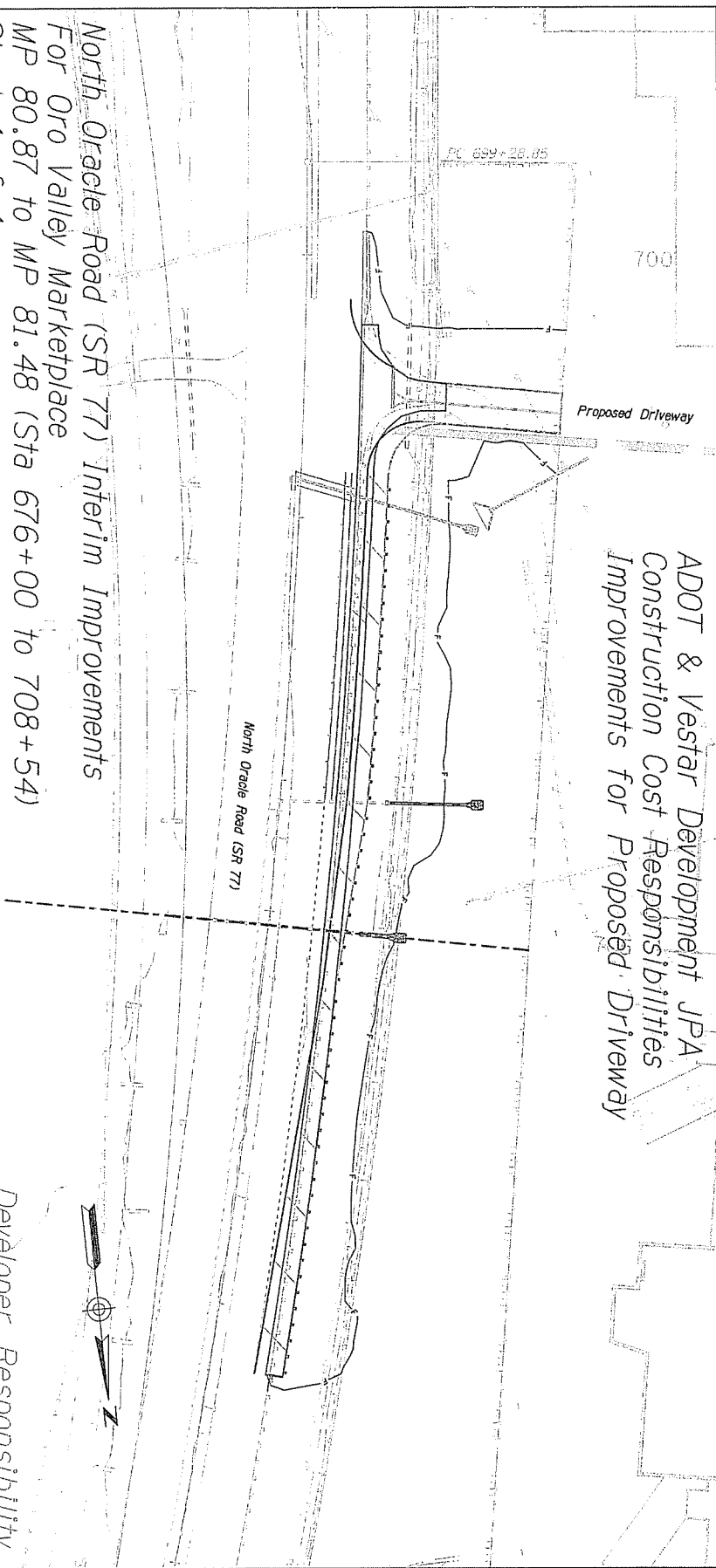


ADOT & Vestar Development JPA
Construction Cost Responsibilities
Improvements for Innovation Market Drive



North Oracle Road (SR 77) Interim Improvements
For Oro Valley Marketplace
MP 80.87 to MP 81.48 (Sta 676+00 to 708+54)
Sheet 3 of 4

ADOT & Vestar Development JPA
Construction Cost Responsibilities
Improvements for Proposed Driveway



North Oracle Road (SR 77) Interim Improvements
For Oro Valley Marketplace
MP 80.87 to MP 81.48 (Sta 676+00 to 708+54)
Sheet 4 of 4

Developer Responsibility
ADOT Responsibility